

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)
)
) No. D-5387
JOHN MAX DOWBAK, M.D.)
) L-09037
Physician's and Surgeon's)
Certificate No. G-39616,)
)
Respondent.)
_____)

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on April 27, 1995 .

IT IS SO ORDERED March 28, 1995 .

MEDICAL BOARD OF CALIFORNIA
DIVISION OF MEDICAL QUALITY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____



IRA LUBELL, M.D.
Chair

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DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Accusation)	
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Respondent.)	
_____)	

PROPOSED DECISION

This matter was tried before Rosalyn M. Chapman, Administrative Law Judge of the Office of Administrative Hearings, at Santa Barbara, California, on February 7, 1995. Complainant was represented at trial by Fred A. Slimp II, Deputy Attorney General. Respondent was present throughout the trial and represented himself.

At the trial, the Accusation was amended as follows: At page 1, line 27, the words "a delinquent status" were deleted and in their stead the words "full force and effect" were inserted; and at page 2, line 1, the date "1992" was deleted and in its stead the date "1996" was inserted.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge finds as follows:

FINDINGS OF FACT

1. On her own motion, the Administrative Law Judge takes official notice, based on Exhibit 1, that, on September 23, 1993, the Accusation was made by Dixon Arnett solely in his official capacity as Executive Director of the Medical Board of California (hereafter Board).

2. On July 2, 1979, Board issued physician's and surgeon's certificate no. G39616 to John Max Dowbak, M.D. (hereafter respondent). Said certificate is in full force and effect.

3. Respondent received his Bachelor of Science degree from Stanford University in June 1974. He received his Medical Degree from New York University Medical Center in June 1978. Thereafter, respondent performed a one year rotating general surgery internship at the University of California at Irvine and a five year orthopedic surgery residency at the University of West Virginia Medical Center and the University of South Carolina, ending in June 1984.

4. After completing the surgery residency, respondent moved to Mississippi where he practiced as an orthopedic surgeon.

5. On August 20, 1992, the Mississippi State Board of Medical Licensure (hereafter Mississippi Board), the agency responsible for licensing physicians in the State of Mississippi, revoked¹ respondent's license to practice medicine in Mississippi, following a duly noticed administrative hearing.² The basis of Mississippi Board's action was its determination that respondent violated Mississippi Code Annotated Section 73-25-29, Subsection (6), based on respondent's conviction of arson in the second degree, a felony involving moral turpitude.

6. Mississippi Board, in reaching its decision to revoke respondent's medical license, made the following Findings of Fact, which are collateral estoppel in our case:

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¹Respondent presented no extenuating or mitigating evidence regarding Mississippi Board's revocation of his license to practice medicine in Mississippi. However, respondent asserts revocation is the only order permitted under Mississippi law, Miss. Code Ann. § 99-19-35, although Miss. Code Anno. Sections 73-25-29 and 73-25-30 give Mississippi Board authority to suspend, place on probation, restrict or otherwise discipline a medical practitioner in Mississippi.

²Respondent was present, and represented by counsel, at Mississippi Board's administrative hearing; but he chose not to testify.

"

II

On July 24, 1991, Licensee [respondent] was indicted by a grand jury in Cause No. 12-307 in the Circuit Court of Oktibbeha County, Mississippi and charged with second degree arson, i.e. did unlawfully, wilfully, feloniously and maliciously aid, counsel and caused to be burned a building structure, the building office of Dr. John Max Dowbak, the property of himself.

III

After a trial by jury, Licensee [respondent] was found guilty as charged on May 7, 1992. On June 8, 1992, Licensee [respondent] appeared before Circuit Judge John M. Montgomery and was sentenced to a term of four (4) years in the Mississippi Department of Corrections and required to pay a fine of \$5,000.00. Following a bail hearing, Licensee's [respondent's] request to be released on bail pending an appeal to the Mississippi Supreme Court was denied and Licensee was immediately incarcerated under the jurisdiction of the Mississippi Department of Corrections."

7. On September 17, 1992, Mississippi Board denied respondent's petition for rehearing. In denying respondent's petition, Mississippi Board specifically found that respondent did not establish "good cause" in that he was "well aware of his right to testify and produce witnesses and papers on his behalf [at the administrative hearing] and he has failed to allege any newly discovered evidence or any other matter which would justify a rehearing."

8. Respondent served his sentence in the Oktibbeha County jail from August 7, 1992, until an undetermined date in June 1993. Thereafter, respondent was released on parole until February 1994, when he completed parole.

9. Respondent's arson in the second degree conviction is pending on appeal to the Mississippi Supreme Court. Respondent adamantly denies having committed arson. Rather, he claims that a couple of disgruntled patients, unhappy with his unwillingness to provide them with narcotics, burned down his medical building, which was insured. No evidence in mitigation or extenuation was presented regarding the arson conviction.

10. Respondent has been licensed as a physician and surgeon in the following states, in addition to California: New York, Mississippi, South Carolina, West Virginia and Florida. Respondent has allowed his medical licenses in West Virginia and Florida to lapse. Based on Mississippi Board's discipline, the medical boards of the States of South Carolina and New York have also taken disciplinary action against respondent and disciplined his licenses to practice medicine in those states.

11. Respondent has not practiced medicine since June 1992.³ Following his release from jail, respondent sought employment in a non-physician capacity in New York and Florida, but was unsuccessful in finding anything other than menial work. Since late November 1994, respondent has been employed in Santa Barbara, California, by his brother, Dr. Gregory Dowbak, a physician and surgeon, as an orthopedic technician. In that capacity, respondent puts on, and removes, casts; removes sutures; sterilizes equipment; prepares operating trays; and the like. Respondent's brother has offered to supervise respondent if he is permitted to remain licensed to practice medicine in California.

12. Over the past two years, respondent has completed approximately thirty-two hours of continuing medical education through correspondence courses. Respondent is not board certified.

13. In 1991, while licensed in New York, respondent participated in the Gift of Life program and provided pro bono medical services to Russian patients brought to the United States for medical treatment.

14. Respondent has not had a useful course of psychotherapy; but has seen a psychotherapist four times.

15. Respondent is not rehabilitated from the revocation of his license to practice medicine in Mississippi or the underlying arson conviction.

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³On August 22, 1994, Judge Stephen J. Smith, of the Office of Administrative Hearings, granted respondent's motions to continue the herein trial from August 1, 1994, to an uncertain date in the future, and to change venue from Sacramento, California, to Southern California provided respondent "shall not practice medicine or surgery in California until such time as this matter is fully litigated and decided by the Medical Board."

* * * * *

Pursuant to the foregoing Findings of Fact, the Administrative Law Judge makes the following Determination of Issues:

CONCLUSIONS OF LAW

1. Grounds To Discipline:

Grounds exist to revoke or suspend respondent's license to act as a physician and surgeon, pursuant to Business and Professions Code (BPC) Sections 2220, 2227, 2234 and 2305, in that another state has revoked respondent's license to practice medicine, constituting unprofessional conduct and grounds to discipline respondent under BPC Section 2305, as set forth in Findings 5-7 above.

Respondent argues that Mississippi Board's discipline does not reflect on his medical skills because it is not related to the practice of medicine. Respondent is not correct. The crime of arson is substantially related to the duties, qualifications or functions of a physician.⁴ Arson, by definition, requires maliciousness⁵, which is defined as "a wish to vex, defraud, annoy, or injure another person, or an intent to do a wrongful act...." This state of mind is incompatible with the duties, qualifications or functions of a physician in that it shows a present or potential unfitness due to psychiatric problems and a lack of honesty -- both qualities essential to a physician practicing medicine in a manner consistent with the public health, safety or welfare.

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⁴A crime is substantially related to a physician's license under the Medical Practice Act "if to a substantial degree it evidences present or potential unfitness ... to perform the functions authorized by the license ... in a manner consistent with the public health, safety or welfare." 16 California Code of Regulations (C.C.R.) Section 1360.

⁵California Penal Code Section 450(e).

2. Rehabilitation:

Respondent presented no extenuating or mitigating circumstances regarding Mississippi Board's revocation of his license to practice medicine in the State of Mississippi (Finding 5), and no extenuating or mitigating circumstances regarding the underlying conviction of arson in the second degree (Finding 9). Additionally, respondent is not rehabilitated. (Finding 15).⁶ Without evidence of rehabilitation, respondent's continued licensure as a physician and surgeon in the State of California would endanger the public health, safety or welfare of California residents. Based on the foregoing, Conclusions of Law no. 1, and Findings of Fact nos. 8-15 above, the only appropriate Order in this case is to revoke respondent's license to practice medicine in California.


* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

ORDER

Physician's and Surgeon's Certificate No. G-39616, issued to respondent John Max Dowbak, M.D., is hereby revoked.

DATED: February 23, 1995



ROSALYN M. CHAPMAN
Administrative Law Judge
Office of Administrative Hearings

RMC:btm

⁶See 16 C.C.R. Sections 1360.1 and 1360.2 for criteria relevant to rehabilitation.

ORIGINAL

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of the State of California
2 JANA L. TUTON
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3 GAIL M. HEPPELL
Deputy Attorney General
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P.O. Box 944255
5 Sacramento, California 94244-2550
Telephone: (916) 324-5336

6 Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

12	In the Matter of the)	No. D-5387
	Accusation Against:)	
13)	<u>ACCUSATION</u>
	JOHN MAX DOWBAK, M.D.)	
14	12 Cat Hollow Rd.)	
	Bayville, NY 11709)	
15)	
	Physician's and Surgeon's)	
16	Certificate No. G 39616)	
)	
17	Respondent.)	
18	_____)	

Complainant, Dixon Arnett, alleges as follows:

1. He is the Executive Director of the Medical Board of California (hereinafter "Board") and makes and files this accusation solely in his official capacity.
2. On or about July 2, 1979, respondent John Max Dowbak, M.D. (hereinafter "respondent") was issued physician's and surgeon's certificate number G 39616 by the Board. Said certificate is in a delinquent status with an expiration date of

1 September 30, 1992.

2 3. Business and Professions Code sections 2220 and
3 2234 provide, in pertinent part, that the Division of Medical
4 Quality may take action against the holder of a physician's and
5 surgeon's certificate who is guilty of unprofessional conduct.

6 4. Business and Professions Code section 2305 provides
7 in part that the revocation, suspension, or other discipline by
8 another state of a license or certificate to practice medicine
9 issued by the state shall constitute unprofessional conduct
10 against such licensee in this state.

11 5. Respondent is subject to disciplinary action in
12 that he is guilty of unprofessional conduct within the meaning of
13 Business and Professions Code section 2305 as follows:

14 On August 20, 1992, the Mississippi State Board of
15 Medical Licensure revoked respondent's license to practice
16 medicine. It was determined that respondent had been convicted
17 of a felony involving moral turpitude. After a trial by jury, on
18 May 7, 1992, respondent was found guilty of second degree arson,
19 unlawfully and wilfully burning his own medical building. A true
20 and correct copy of the decision of the Mississippi State Board
21 decision is attached as Exhibit A and incorporated by reference
22 as if set forth in full.

23 WHEREFORE, complainant prays that the Division of
24 Medical Quality hold a hearing on the matters alleged herein and
25 following said hearing issue a decision:

26 1. Revoking or suspending physician's and surgeon's
27 certificate number G 39616 heretofore issued to respondent John

1 Max Dowbak, M.D.;

2 2. Prohibiting respondent from supervising physician's
3 assistants; and

4 3. Taking such other and further action as it deems
5 necessary.

6 DATED: 9/23/93

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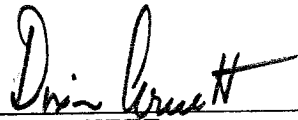
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DIXON ARNETT
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
IN THE MATTER OF THE PHYSICIAN'S LICENSE

OF

JOHN MAX DOWBAK, M.D.

ORDER DENYING PETITION FOR REHEARING

THIS MATTER, came on regularly for hearing September 17, 1992, before the Mississippi State Board of Medical Licensure, in response to Petition of James Max Dowbak, M.D., hereinafter referred to as "Licensee," for a rehearing or new hearing, pursuant to authority granted in Miss. Code Ann. Section 73-25-27, as amended. Licensee's certificate to practice medicine was revoked following a hearing on August 20, 1992, wherein Licensee was present with counsel. During the hearing, Licensee did not testify, but was offered an opportunity to do so and an opportunity to produce witnesses or evidence on his behalf. For reasons set forth in his Petition, Licensee now wishes the Board to grant him a rehearing.

The hearing on said motion was convened at 3:00 p.m., Licensee being present without counsel. Complaint Counsel retained for the purpose of responding to the Petition was Hon. Stan T. Ingram, Jackson, Mississippi. During the hearing and deliberations, the Board was represented by Hon. Larry

Stroud, Special Assistant Attorney General. The Board, after hearing said Petition, finds the same not to be well taken.

Section 73-25-27 requires, in part, that a physician who has had his license revoked must file a Petition for Rehearing within ten (10) days, immediately following service on him of the order or judgment of the Board of Medical Licensure revoking his license. Although Licensee timely filed his Petition, Licensee has failed to establish the requisite "good cause," as required by Section 73-25-27. Licensee was well aware of his right to testify and produce witnesses and papers in his behalf and he has failed to allege any newly discovered evidence or any other matter which would justify a rehearing.

IT IS, THEREFORE, ORDERED that Licensee's Petition for Rehearing is denied.

IT IS FURTHER ORDERED, that pursuant to Section 73-25-27, a copy of this Order shall be sent by registered mail or personally served upon Licensee.

ORDERED, this the 17TH day of September, 1992.

MISSISSIPPI STATE BOARD OF
MEDICAL LICENSURE

BY:


FRANK D. MORGAN, JR., M.D.
EXECUTIVE OFFICER

EXHIBIT A

June 24, 1993

STATE OF MISSISSIPPI
COUNTY OF HINDS

I, Frank J. Morgan, Jr., M.D., Executive Officer of the Mississippi State Board of Medical Licensure, do hereby certify that I am the official custodian of the records of said Board and that the attached copies of the Summons and Affidavit, Order and Denying Petition for Rehearing dated July 17, 1992, August 20, 1992 and September 17, 1992 respectively concerning John Max Dowbak, M.D., are true and correct copies of the original hereof as same appears on file in this office.

Witness my official hand and seal of the Board, this the 24th day of June, 1993.

MISSISSIPPI STATE BOARD OF MEDICAL
LICENSURE

BY: *Frank J. Morgan, Jr.*
Frank J. Morgan, Jr., M.D.
Executive Officer

Sworn to and subscribed before me this 24th day of

June, 1993.

My Commission Expires:
March 17, 1997

June C. Harris
Notary Public

John Max Dowbak. M.D.

Social Security Number:

[REDACTED]

Date of Birth:

[REDACTED]

Last Known Address:

Oktibbeha County Jail
Starkville, MS

BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
IN THE MATTER OF THE PHYSICIAN'S LICENSE

OF

JOHN MAX DOWBAK

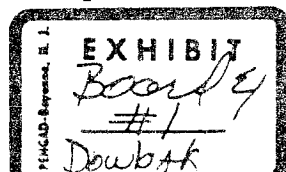
SUMMONS

TO: JOHN MAX DOWBAK, M.D.
308 Hospital Road
Starkville, Mississippi 39759

License No. 10321

YOU ARE HEREBY SUMMONED to appear before the Mississippi State Board of Medical Licensure in its Executive Conference Room, 2688-D Insurance Center Drive, Hinds County, Jackson, Mississippi, on Thursday, August 20, 1992, at 10:00 a.m., to answer the charges filed against you in the matter now pending before this Board. The Mississippi State Board of Medical Licensure, charged by law with the licensing of medical doctors in this State, under Title 73, Chapter 25, Mississippi Code (1972) Annotated, charges that you, a physician duly licensed under the authority of the Mississippi State Board of Medical Licensure and the laws of the State of Mississippi, have been convicted of a felony or misdemeanor involving moral turpitude, a certified copy of the conviction order or judgment rendered by the trial court being prima facie evidence thereof, notwithstanding the pendency of any appeal.


Under Subsection (6) of Section 73-25-29, Mississippi Code (1972) Annotated, as amended, such acts constitute grounds for the Mississippi State Board of Medical Licensure to place your license on probation, the terms of which may be set by the Board; suspend



your right to practice for a time deemed proper by the Board; revoke your Mississippi medical license or take any other action in relation to your license as the Board may deem proper under the circumstances.

The Mississippi State Board of Medical Licensure further advises you that you have a right to be present at the hearing, to be represented by counsel, to produce witnesses or evidence on your behalf, to cross-examine witnesses and to have subpoenas issued by this Board.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 17TH day of July, 1992.



FRANK J. MORGAN, JR., M.D.
Executive Officer
Mississippi State Board of
Medical Licensure

AFFIDAVIT

STATE OF MISSISSIPPI

COUNTY OF HINDS

I, GERALD W. ROBBINS, Investigator, Mississippi State Board of Medical Licensure, do hereby make oath that I have reason to believe and do believe:

1. John Max Dowbak, M.D., hereinafter referred to as "Licensee", is a physician licensed to practice medicine in the State of Mississippi, currently holding License No. 10321.
2. On or about July 24, 1991, Licensee was indicted by a grand jury in Cause No. 12-307 in the Circuit Court of Oktibbeha County, Mississippi and charged with second degree arson, i.e. did unlawfully, wilfully, feloniously and maliciously aid, counsel and cause to be burned a building or structure, the billing office of Dr. John Max Dowbak, the property of himself.
3. After a trial by jury, Licensee was found guilty as charged on May 7, 1992. On June 8, 1992, Licensee appeared before Circuit Judge John M. Montgomery and

was sentenced to a term of four (4) years in the Mississippi Department of Corrections and required to pay a fine of \$5,000.00.

Gerald W. Robbins
GERALD W. ROBBINS
Investigator,
Mississippi State Board of
Medical Licensure

SWORN TO AND SUBSCRIBED BEFORE ME, this the 17th day of July, 1992.

Evelyn Pitt
NOTARY PUBLIC

My Commission Expires:

7-24-93

BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
IN THE MATTER OF THE PHYSICIAN'S LICENSE

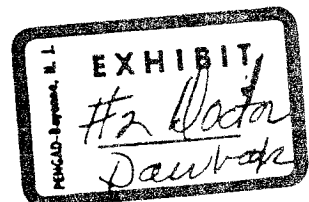
OF

JOHN MAX DOWBAK, M.D.

ORDER

THIS MATTER, came on for hearing on August 20, 1992, before the Mississippi State Board of Medical Licensure pursuant to Mississippi Code Annotated, Section 73-25-27, as amended. The Board initiated these proceedings on July 17, 1992, by issuing a Summons, against John Max Dowbak, M. D., hereinafter referred to as "Licensee," charging him with violation of Sub-Section (6) of Section 73-25-29, i.e., having been convicted of a felony or misdemeanor involving moral turpitude, a certified copy of the conviction order or judgment rendered by the trial court being prima facie evidence thereof, notwithstanding the pendency of any appeal. The specific allegations were set forth by Affidavit of Gerald W. Robbins, Investigator of the Mississippi State Board of Medical Licensure, attached to and made a part of the Summons.

The hearing was convened at 10:00 o'clock a.m., John Max Dowbak, M.D. appearing in person and represented by Honorable Lee Sudduth, Columbus, Mississippi. Complaint Counsel retained for the purpose of prosecution was Honorable Stan T. Ingram, Jackson, Mississippi. During the hearing and deliberations, the Board was represented by Honorable Larry Stroud, Special Assistant Attorney General. Evidence and testimony was then presented. Based on the



above, the Board renders the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

I.

Licensee is a physician licensed to practice medicine in the State of Mississippi, currently holding License No. 10321.

II.

On July 24, 1991, Licensee was indicted by a grand jury in Cause No. 12-307 in the Circuit Court of Oktibbeha County, Mississippi and charged with second degree arson, i.e. did unlawfully, wilfully, feloniously and maliciously aid, counsel and cause to be burned a building or structure, the billing office of Dr. John Max Dowbak, the property of himself.

III.

After a trial by jury, Licensee was found guilty as charged on May 7, 1992. On June 8, 1992, Licensee appeared before Circuit Judge John M. Montgomery and was sentenced to a term of four (4) years in the Mississippi Department of Corrections and required to pay a fine of \$5,000.00. Following a bail hearing, Licensee's request to be released on bail pending an appeal to the Mississippi Supreme Court was denied and Licensee was immediately incarcerated under the jurisdiction of the Mississippi Department of Corrections.

CONCLUSIONS OF LAW


Based on the Findings of Fact as enumerated above, Licensee has been convicted of a felony involving moral turpitude, in violation of Sub-Section (6) of Section 73-25-29, Miss. Code (1972), as amended. As a result, the Board has the statutory authority pursuant to Section 73-25-30, to suspend his right to practice medicine for a time deemed proper by the Board; revoke said license, place said license on probation, the terms of which may be set by the Board, or take any other action in relation to said license as the Board may deem proper under the circumstances.

ORDER

IT IS, HEREBY ORDERED, that based upon the Findings of Fact and Conclusions of Law as enumerated above, Mississippi Medical License No. 10321, issued to John Max Dowbak, M.D. is hereby revoked.

IT IS FURTHER ORDERED that pursuant to Section 73-25-27, a copy of this Order shall be sent by registered mail or personally served upon John Max Dowbak, M.D.

ORDERED this the 20th day of August, 1992.


FRANK J. MORGAN, JR., M.D.,
EXECUTIVE OFFICER,
MISSISSIPPI STATE BOARD OF
MEDICAL LICENSURE